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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
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IN THE MATTER OF THE APPLICATION OF
CIRCLE CITY WATER COMPANY, L.L.C. FOR
APPROVAL TO DELETE PORTIONS OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY AND TO DELETE A
REQUIREMENT SET FORTH IN DECISION NO.
68246.

DOCKET NO. W-03510A-13-0397

PROCEDURAL ORDER
(Reschedules Procedural Conference)

BY THE COMMISSION:

On November 19, 2013, Circle City Water Company, L.L.C. ("Circle City" or the "Company") filed with the Arizona Corporation Commission ("Commission") an application requesting approval to delete portions of its Certificate of Convenience and Necessity ("CC&N") and to delete the requirement for Circle City in its next rate case filing to demonstrate that its existing customers have been positively impacted by the addition of new water facilities necessary to serve the extension area, pursuant to Decision No. 68246 (October 25, 2005). Circle City's application requests deletion of portions of its CC&N encompassing two developments known as Lake Pleasant 5000 and Warrick 160. Circle City's application states that the developments are not viable and that service in the CC&N area will not be necessary in the foreseeable future.

On December 11, 2013, Lake Pleasant 5000, L.L.C. ("LP5K") filed an Application for Leave to Intervene, stating that its development partners own the property Circle City wishes to delete and that LP5K had entered into a Water Facilities Agreement ("WFA") with Circle City under which LP5K has paid \$67,782.61 to Circle City.

On December 31, 2013, by Procedural Order, intervention was granted to LP5K.

On January 9, 2014, Rex G. Maughan and Ruth G. Maughan, Trustees of the Maughan Revocable Trust of 2007 ("MRT"), filed an Application for Leave to Intervene, stating that MRT is an owner of the development master plan known as LP5K and that MRT's development partners

1 entered into a WFA with Circle City under which MRT has paid \$67,782.61 to Circle City.

2 On March 12, 2014, by Procedural Order, intervention was granted to MRT.

3 On September 29, 2014, LP5K filed a Notice of Filing a letter from the principals of LP5K to
4 Circle City.

5 On October 17, 2014, the Commission's Utilities Division ("Staff") filed a Staff Report,
6 recommending denial of the Company's application to delete portions of its CC&N, but
7 recommending approval of deletion of the requirement regarding the new water facilities contained in
8 Decision No. 68246.

9 On October 21, 2014, Staff filed an amended Staff Report, correcting typographical errors
10 contained within the report. Staff's recommendations remained unchanged.

11 On October 23, 2014, Circle City filed a Motion and Request for Procedural Conference,
12 requesting that the matter be set for hearing and that other procedural deadlines be established.

13 On October 28, 2014, by Procedural Order, a procedural conference was scheduled for
14 November 10, 2014, to discuss a procedural schedule for this matter.

15 On November 10, 2014, a Procedural Conference was held. The Company, LP5K, MRT, and
16 Staff ("the parties") appeared through counsel. Discussions were held regarding the appropriate
17 procedural schedule for this matter. The parties and Staff agreed to engage in settlement discussions
18 and to file an update with the Commission as to the outcome of those discussions within 30 days of
19 the procedural conference. The parties also agreed that this matter should be set for hearing.

20 On December 10, 2014, a Procedural Order was issued scheduling an evidentiary hearing to
21 commence on March 2, 2015; requiring the filing of direct testimony and responsive testimony by
22 January 16, 2015, and January 30, 2015, respectively; and establishing other procedural deadlines.

23 On December 19, 2014, Circle City filed a Resolution Approving Representation.

24 On December 29, 2014, Circle City filed a Status Update of Settlement Negotiations. Circle
25 City's Status Update stated that the parties had engaged in settlement negotiations; that MRT had issued
26 and signed a "good faith" "best and final" settlement proposal letter; that the settlement proposal
27 letter proffered settlement inclusive of LP5K, but was only signed by counsel for MRT; and that
28 further efforts to clarify MRT's settlement proposal remained incomplete and/or unclear. Circle

1 City's filing also stated that settlement of the issues was not precluded in the future.

2 On the same date, LP5K filed a Status Update. LP5K's Status Update indicated that
3 settlement was possible and requested that the procedural schedule be suspended to allow for further
4 settlement discussions.

5 On January 6, 2015, Staff filed a Notice of Filing Direct Testimony.

6 On January 9, 2015, Staff filed a Response to Status Update, stating that based on the
7 representations made by the other parties regarding on-going settlement negotiations, Staff had no
8 objection to suspending the procedural schedule.

9 On January 13, 2015, Circle City docketed a response to LP5K's request to suspend the
10 procedural schedule. Circle City stated that the Company agrees with LP5K's request to suspend the
11 procedural schedule, but requested that the procedural schedule only be suspended until January 30,
12 2015, and not indefinitely.

13 On January 13, 2015, by Procedural Order, the evidentiary portion of the hearing was vacated,
14 the March 2, 2015, hearing date was retained only for the purpose of taking public comments, and the
15 timeclock remained suspended.

16 On January 14, 2015, Circle City filed a Notice of Filing Brooke Utilities, Inc.'s Response to
17 Intervener Status Update.¹

18 On February 23, 2015, Circle City filed a Request to Modify Procedural Order to Reschedule
19 Public Comment Session.

20 On February 26, 2015, Staff filed its Response to Request to Modify Procedural Order to
21 Reschedule Public Comment Session.

22 On March 2, 2015, a public comment proceeding was held as scheduled. LP5K, MRT, and
23 Staff appeared through counsel. Circle City failed to appear. No members of the public were present
24 to give comments on the application. It was determined during the proceeding that LP5K would
25 update the Commission on the status of the settlement negotiations by March 27, 2015.

26 On March 27, 2015, LP5K filed a Status Update, stating that LP5K and MRT submitted a
27

28 ¹ Robert Hardcastle is the owner of both Brooke Utilities, Inc. and Circle City. Although the caption included Brooke Utilities, the issues discussed in the pleading related to the issues raised in Circle City's application.

1 settlement offer to Circle City on February 17, 2015; that the parties discussed the proposed
2 settlement offer on March 24, 2015; and that the parties agreed to submit another update to the
3 Commission by April 6, 2015.

4 On April 6, 2015, LP5K filed a Status Update, stating that LP5K had not had any further
5 discussions with Circle City and that LP5K anticipated filing a motion to dismiss Circle City's
6 application in this docket.

7 On April 17, 2015, Circle City filed a Status Update and Request to Set Procedural
8 Conference. Circle City's filing stated that negotiations ceased on April 6, 2015; that Circle City
9 believed it was reasonable to conclude that LP5K had no interest in further negotiations; and that
10 Circle City had rejected LP5K's February 11, 2015, settlement offer. Therefore, Circle City
11 concluded that settlement negotiations had failed and requested that a procedural conference be held
12 to discuss a hearing date in this matter.

13 On April 28, 2015, by Procedural Order, a procedural conference was scheduled to be held on
14 May 8, 2015.

15 On May 5, 2015, Circle City filed a Request for Continuance of Procedural Conference,
16 stating that the owner for the Company had a personal scheduling conflict and proposing alternative
17 dates for the procedural conference to be held.

18 On May 6, 2015, Staff filed a Response to Motion to Continue Procedural Conference, stating
19 that Staff has no objection to the Company's request and clarifying Staff's available dates to attend a
20 future procedural conference.

21 Accordingly, the procedural conference scheduled for May 8, 2015, should be rescheduled.

22 IT IS THEREFORE ORDERED that the procedural conference scheduled for May 8,
23 2015, at 10:00 a.m., shall be continued to June 8, 2015, at 10:00 a.m., or as soon thereafter as is
24 practical, at the Commission's offices, 1200 West Washington Street, Hearing Room No. 1, Phoenix,
25 AZ 85007.

26 IT IS FURTHER ORDERED that the **timeclock** in this matter remains **suspended**.

27 IT IS FURTHER ORDERED that each party to this matter may opt to receive service of all
28 Procedural and Recommended Orders issued by the Commission's Hearing Division in this matter


1 via e-mail rather than U.S. Mail, as permitted under A.A.C. R14-3-107(B). To exercise this option, a
2 party shall send to hearingsdivision@azcc.gov, from the e-mail address at which the party desires to
3 receive service, an e-mail request including the name of the party on whom service is to be made and
4 the docket number for this matter. After a party receives an e-mail confirmation of its request from
5 hearingsdivision@azcc.gov, the party will receive all future Procedural and Recommended Orders
6 issued by the Hearing Division in this matter via e-mails to the address provided by the party, unless
7 and until the party withdraws its request. Service of a document via e-mail shall be considered
8 complete upon the sending of an e-mail containing the document to the e-mail address provided by a
9 party, regardless of whether the party receives or reads the e-mail containing the document.

10 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
11 Communications) continues to apply to this proceeding, as the matter has been set for public hearing,
12 and shall remain in effect until the Commission's Decision in this matter is final and non-appealable.

13 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
14 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
15 Supreme Court Rule 42). Representation before the Commission includes the obligation to appear at
16 all hearings, procedural conferences, and Open Meetings for which the matter is scheduled for
17 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
18 Law Judge or Commission.

19 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
20 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

21 DATED this 7th day of May, 2015.

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23 
24 YVETTE B. KINSEY
25 ADMINISTRATIVE LAW JUDGE
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1 Copies of the foregoing mailed/emailed
this 7th day of May, 2015 to:

2 Robert Hardcastle
3 P.O. Box 82218
4 Bakersfield, CA 93380-2218
RTH@Brookeutilities.com

5 Garry Hays
6 LAW OFFICES OF GARRY D. HAYS, PC
7 1702 East Highland Avenue, Suite 204
Phoenix, AZ 85016
Attorney for Lake Pleasant 5000, L.L.C.
ghays@lawgdh.com

8 Darin P. Reber
9 7501 E. McCormick Parkway
10 Scottsdale, Arizona 85258
11 Counsel for Maughan Revocable
Trust of 2007 and Rex G. Maughan
and Ruth G. Maughan.
dreber@foreverliving.com

12 Janice Alward, Chief Counsel
13 Legal Division
14 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

15 Steven M. Olea, Director
16 Utilities Division
17 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

18 COASH & COASH, INC.
19 COURT REPORTING, VIDEO & VIDEOCONFERENCING
20 1802 N. 7th Street,
Phoenix, AZ 85006

21 By: Rebecca Unquera
22 Rebecca Unquera
23 Assistant to Yvette B. Kinsey
24
25
26
27
28